

**Robert Brown, an Individual, d/b/a Robert Brown Construction Co., Inc. and Laborers' Local No. 894 a/w Laborers' International Union of North America, AFL-CIO. Case 8-CA-24503**

November 12, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on April 14, 1992, the General Counsel of the National Labor Relations Board issued a complaint on May 28, 1992, against Robert Brown, an Individual, d/b/a Robert Brown Construction Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 8, 1992, the General Counsel filed a Motion for Summary Judgment. On October 15, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by letter dated August 11, 1992, notified the Respondent that unless an answer was received before the close of business on August 18, 1992, a Motion for Summary Judgment would be filed. To date no answer has been filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a sole proprietorship with an office and place of business in Cleveland, Ohio, has been en-

gaged as a masonry contractor in the construction industry doing construction. During the calendar year ending December 31, 1991, the Respondent, in conducting its business operations described above, provided goods and services valued in excess of \$50,000 for Wilson Bennett, Inc., an enterprise within the State of Ohio, which during this time, also purchased and received at its North Royalton, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Laborers' Local No. 894 a/w Laborers' International Union of North America, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Employees of the Employer in the following classifications: (a) Group I: gunite nozzle man; tunnel miner; water line caulker; dynamite man; structural precast welder & layout; pump hose nozzle man; (b) Group II: pipe layer; rock driller; mucker-tunnel; burner; form setter; power saw; jack hammer; bottom man; hod carrier; power buggy or power wheelbarrow; bob cat or similar; (c) Group III: air driven boring machine; tamper operator; asphalt raker; paving bed maker; concrete puddler on building work; concrete batch dumper; materials mixer; wire mesh handler; hook-up on demolition work; scaffold erector; structural precast erector; power tools—air, gas, or electric; (d) Group IV: construction laborer; welders' helper; carpenters' tender; landscape laborer; mason tender; concrete bucket tender; (e) Group V: watchman rate.

Since about November 20, 1990, and at all material times, the Laborers' Local No. 894 a/w Laborers' International Union of North America, AFL-CIO has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, which is effective from June 1, 1990, to June 1, 1993.

At all times since November 20, 1990, pursuant to Section 8(f) of the Act, the Union has been the limited exclusive 9(a) collective-bargaining representative of the unit.<sup>1</sup>

<sup>1</sup> The complaint's commerce data and unit description suggest that the Respondent is a construction industry employer subject to the provisions of Sec. 8(f) of the Act. Accordingly, in the absence of an allegation that the bargain-

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About October 15, 1991,<sup>2</sup> the Respondent failed to continue in effect all the terms and conditions of the agreement described above by failing to submit contribution report forms, and health and welfare, pension, and labor relations division training and upgrading benefit contributions, and by failing to remit local union and district council dues.

The terms and conditions of employment, described above, are mandatory subjects for the purpose of collective bargaining.

#### CONCLUSION OF LAW

By the conduct described above the Respondent has been failing and refusing to bargain collectively and in good faith with the Union, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed since October 15, 1991, to submit contribution report forms, we shall order the Respondent to submit such forms. In addition, having found that the Respondent has failed since the same date to submit health and welfare, pension, and labor relations division training and upgrading benefit contributions, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), and to reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, having

found that the Respondent has failed since the same date to remit local union and district council dues, we shall order the Respondent to remit such dues pursuant to the parties' collective-bargaining agreement, with interest as computed under *New Horizons for the Retarded*, supra.

#### ORDER

The National Labor Relations Board orders that the Respondent, Robert Brown, an Individual, d/b/a Robert Brown Construction Co., Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the agreement by failing to submit contribution report forms, and health and welfare, pension, and labor relations division training and upgrading benefit contributions, or by failing to remit local union and district council dues.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative in the unit described below:

Employees of the Employer in the following classifications: (a) Group I: gunite nozzle man; tunnel miner; water line caulker; dynamite man; structural precast welder & layout; pump hose nozzle man; (b) Group II: pipe layer; rock driller; mucker-tunnel; burner; form setter; power saw; jack hammer; bottom man; hod carrier; power buggy or power wheelbarrow; bob cat or similar; (c) Group III: air driven boring machine; tamper operator; asphalt raker; paving bed maker; concrete puddler on building work; concrete batch dumper; materials mixer; wire mesh handler; hook-up on demolition work; scaffold erector; structural precast erector; power tools—air, gas, or electric; (d) Group IV: construction laborer; welders' helper; carpenters' tender; landscape laborer; mason tender; concrete bucket tender; (e) Group V: watchman rate.

(b) Submit all contribution report forms and health and welfare, pension, and labor relations division training and upgrading benefit contributions that have not been submitted since October 15, 1991.

(c) Make whole unit employees for any loss of benefits or other expenses suffered as a result of the failure to make the contractually required benefit contributions since October 15, 1991, as set forth in the remedy section of this decision.

ing relationship is actually based on 9(a) majority support, we find that the relationship was entered into pursuant to Sec. 8(f) and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See *Electri-Tech, Inc.*, 306 NLRB No. 138, slip op. at 3 fn. 2 (Mar. 16, 1992) (citing *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988)).

<sup>2</sup> Although the complaint alleges that the Respondent's failure to abide by the contract began about October 15, 1992, this was an obvious clerical error since the complaint itself issued in May 1992, and would obviously not be alleging misconduct in futuro. Accordingly, and as the correct date is otherwise apparent from the record, we have corrected the error in our Decision and Order.

(d) Remit all local union and district council dues that have not been remitted since October 15, 1991, as set forth in the remedy section of this decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Post at its facility in Cleveland, Ohio, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of the agreement with the Laborers' Local No. 894 a/w Laborers' International Union of North America, AFL-CIO by failing to submit contribution report forms, and health and welfare, pension, and labor relations division training and upgrading

benefit contributions, or by failing to remit local union and district council dues.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative in the unit described below:

Employees of the Employer in the following classifications: (a) Group I: gunite nozzle man; tunnel miner; water line caulker; dynamite man; structural precast welder & layout; pump hose nozzle man; (b) Group II: pipe layer; rock driller; mucker-tunnel; burner; form setter; power saw; jack hammer; bottom man; hod carrier; power buggy or power wheelbarrow; bob cat or similar; (c) Group III: air driven boring machine; tamper operator; asphalt raker; paving bed maker; concrete puddler on building work; concrete batch dumper; materials mixer; wire mesh handler; hook-up on demolition work; scaffold erector; structural precast erector; power tools—air, gas, or electric; (d) Group IV: construction laborer; welders' helper; carpenters' tender; landscape laborer; mason tender; concrete bucket tender; (e) Group V: watchman rate.

WE WILL submit all contribution report forms and health and welfare, pension, and labor relations division training and upgrading benefit contributions that we have failed to submit since October 15, 1991.

WE WILL make whole unit employees for any loss of benefits or other expenses suffered as a result of our failure to make the contractually required benefit contributions since October 15, 1991.

WE WILL remit all local union and district council dues that we have failed to remit since October 15, 1991.

ROBERT BROWN, AN INDIVIDUAL, D/B/A  
ROBERT BROWN CONSTRUCTION CO.,  
INC.